



NANGOF Trust

Namibia Non-Governmental Organisations Forum Trust

Advocating Networking Supporting

NANGOF Trust and HUMAN DIGNITY JOINT SUBMISSION

FOR THE PREPARATION BY THE COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS OF A LIST OF ISSUES FOR THE EXAMINATION OF THE INITIAL, FIRST AND SECOND PERIODIC REPORTS OF NAMIBIA

UNITED NATIONS COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

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NANGOF Trust/ Human Dignity

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Introduction

1. Namibia still faces one of the highest income inequalities in the world as far too many Namibians still live in poverty with a bleak outlook on the future alongside a few who have accumulated extreme wealth. In the absence of economic security, precarious living conditions and poverty are still widespread.
2. During its 56th Pre-sessional Working Group session, from 12 to 16 October 2015, the Committee on Economic, Social and Cultural Rights (the Committee) will prepare and adopt a List of Issues ahead of its review of Namibia's initial, first and second periodic Reports combined in a single document.
3. NANGOF Trust and Human Dignity welcome the opportunity to contribute to the Committee's preparation of the List of Issues. In this submission, our organisations bring to the attention of the Committee concerns related to the implementation of articles 6, 7, 9, 11, 12 and 13 of the International Covenant on Economic Social and Cultural Rights (ICESCR) and formulates suggestions to the Committee for the List of Issues for the examination of Namibia.

Presentation of NANGOF Trust and Human Dignity

4. The **NANGOF Trust**, being the main umbrella body for Namibian civil society organisations, plays an important role in supporting Civil Society Organisations (CSOs) through services such as institutional capacity building, information sharing, networking and policy advocacy. NANGOF Trust is also the principal umbrella network, which uses the combined resources base of its membership to work towards the creation and sustenance of an enabling environment for NGOs.
5. Its role is to make the work of CSOs more visible and effective, to facilitate the process of policy formulation with increased participation of civil society, and co-ordinate the efforts of CSOs to ensure that the development needs of the poor and marginalized are addressed.
6. The NANGOF Trust is also designed to perform a watchdog role, participating in broad strategic planning for the civil society sector, lobbying government for financial resources for development and holding government accountable.
7. Put simply, the NANGOF Trust is conceived as a reference point to play a liaison role between CSOs, donors and other development partners, and government. Ideally it is the

body that should offer strategic guidance on development priorities to donors and government.

8. **Human Dignity** is an independent, non-profit and non-governmental organization founded in January 2014. Its mission is to contribute to the respect, protection and realization of economic, social and cultural rights in sub-Saharan Africa by supporting national efforts to integrate human rights principles, norms and standards in public policies.
9. We work to strengthen human rights through capacity building, research, documentation and advocacy to achieve the full implementation of the International Covenant on Economic, Social and Cultural Rights and the African Charter on Human and Peoples' Rights.
10. Human Dignity works with civil society partners in strengthening their role as key monitors of the State implementation of human rights obligations. Together with national CSOs, Human Dignity advocate for governments to take effective measures to meet their human rights obligations in relation to economic, social and cultural rights.

I. Articles 6 and 7 ICESCR: The rights to work and to just and favourable conditions of work

11. Namibia generally has progressive labour laws. The Labour Act (No. 11 of 2007), the primary piece of legislation regulating labour relations in the country, contains a chapter dedicated to the protection of fundamental rights and freedoms in the workplace. The fundamental rights and freedoms protected in the Act include freedom from discrimination, prohibition of certain forms of child labour, forced labour and sexual harassment as well as freedom of association.
12. The Labour Act also contains a chapter guaranteeing basic conditions of employment. The basic conditions of employment guaranteed include amongst others, annual leave, sick leave, paid maternity leave, compassionate leave, safe working conditions, overtime payment for work done beyond ordinary working hours and on Sundays and public holidays. While trade unions are aiming to improve the wages of workers, they have not come near in closing the huge wage gap.
13. **NANGOF Trust and Human Dignity make the following suggestions for the List of Issues for the examination of Namibia:**
 - What are the reasons for the Government inaction to ensure a minimum wage?
 - Is there is minimum wage for public servants and how is it calculated? When was it last revised? Were trade unions involved in the negotiations?
 - What have been the measures taken by the Division of Occupational Health and Safety to implement the health and safety regulations of the 2007 Labour Act? According to paragraph 172 of the State initial report: « the regulations apply in all areas, but admittedly, there are some difficulties in certain sectors such as agriculture and maritime. Studies are being carried out with a view to developing up-to-date standards and regulations in areas that are lacking. »
 - What is the situation regarding the seven teachers arrested in Oshakati in 2013 for demonstrating against poor working conditions? They were among some 300 teachers who went on strike demanding fair salaries and better working conditions as part of nationwide industrial action by the profession.
 - Provide updated data on the prevalence of child labour, particularly in the informal sector and rural areas.

II. Article 9 ICESCR: The right to social security

14. Namibia is following a dual system of social security and social assistance. The social security system is a contributory scheme based on social insurance and is mainly funded by contributions by employees and employers. This scheme is mainly governed by the Social Security Act (No. 34 of 1994). The Act provides for the establishment of the Social Security Commission (SCC), which in the main is responsible to administer the various funds established by the Act or under any other law.
15. **NANGOF Trust and Human Dignity make the following suggestions for the List of Issues for the examination of Namibia:**
- Have any measures been taken to provide social security benefits to informal workers through voluntary insurance for instance?
 - Provide information on the establishment of the three funds to be put in place according to paragraph 213 of the State initial report (Medical Aid Fund, Retirement pension Fund and Development Fund)
 - Will these funds cover all categories of workers including workers of the informal sector?

III. Article 11 ICESCR: The right to an adequate standard of living

The right to housing

16. The housing situation in Namibia, specifically low cost housing, can at best be described as critical. The country is experiencing rapid urbanisation. It is estimated that about 25% of Namibia's population live in informal settlements. This means that over one quarter of Namibians live in impoverished dwellings typically consisting of corrugated shacks without running water, electricity and sanitary facilities.
17. Despite the policies and programmes put in place by the authorities, which include the Build Together National Housing Project and the National Housing Enterprise (NHE), the situation is still dire. For instance, the Build Together Programme (BTP), a self-help programme initiated by the Minister of Regional & Local Government & Housing & Rural Development (MRLGHRD) to house the low and ultra-low income of Namibia, is said to be plagued with severe money shortages, a backlog of over 300 000 applications, abuse of power and corruption. The effectiveness of the Programme is further hampered by the non - availability of affordable serviced plots. The majority of poor people, in both urban and rural areas, cannot afford land, as it is very expensive. The Programme is also experiencing a lack of technical staff. Furthermore, most houses build under the BTP are of a poor quality.
18. In relation to women's access to land, the Communal Land Reform Act (Act No. 5 of 2002) was intended to increase women's access to communal land by repealing the discriminatory customary practice that prevented widows from remaining on communal land allocated to their deceased husbands. However, its impact in particular in rural areas has been limited and little information is available on its implementation.
19. **NANGOF Trust and Human Dignity make the following suggestions for the List of Issues for the examination of Namibia:**

- What are the steps taken to improve housing conditions in the informal settlements including access to clean drinking water?
- What has been the impact of the housing subsidies on the affordability of housing especially for the poorest section of the population?
- What steps are being taken to effectively implement the Communal Land Reform Act including measures taken to ensure women's access to communal land?

IV. Article 12 ICESCR: The right to health

20. Since independence access to health services in Namibia has indeed increased. It's worth noting that some diseases such as measles, neonatal tetanus and polio have virtually been eradicated, not least because of expanded immunisation programmes run by the State. Many challenges still remain however.

21. The right to health is not expressly provided for in the Namibian Constitution. It is couched as a directive principle of State policy under article 95 of the Constitution. This article makes a general provision on the promotion of the welfare of the people of Namibia and it requires the State to actively promote and maintain their welfare by enacting laws that ensure that the health and strength of workers, men, women and children are not abused and that citizens are not forced by economic necessity to enter vocations unsuited to their age and strength. This article requires the State to ensure consistent planning to raise and maintain an acceptable level of nutrition and standard of living for all Namibians, as well as to improve public health.

Quality of health services

22. While the health system is now more equitable and accessible, it is still lagging in its quality and efficiency and continues to be hampered by a shortage of skilled health workers, managers and other technical professionals.

State response to the HIV/AIDS pandemic and discrimination

23. The biggest challenge remains the HIV/AIDS pandemic. The State should be applauded for its efforts and commitment to roll out anti-retroviral (ARV) treatment in the public sector. However, treatment and care services for women and men, as pointed out by the International Community of Women Living with HIV/AIDS (ICW), living with HIV are currently inadequate. Though 85% of all individuals in need of ARV in Namibia were receiving ARV in 2007 only 65% of Namibian women in need of prevention of mother-to-child transmission (PMTCT) were currently receiving them.¹ It has been demonstrated that some prevention of PMTCT regimes can decrease HIV transmission from mother to child from 32% to less than 2%.²

24. HIV positive status has recently been the ground for discrimination against women with some being forced and coerced to get sterilized. In 2008, the Namibia Women's Health Network (NWHN), a NANGOF Trust member, and the International Community of Women Living with HIV/AIDS (ICW) uncovered almost 40 HIV positive women who were subjected to coerced sterilization in Namibia. Over a dozen more cases have been documented since 2008. In all of the cases, medical personnel failed to obtain the

¹ WORLD HEALTH ORGANIZATION, UNAIDS, & UNICEF, EPIDEMIOLOGICAL FACT SHEET ON HIV AND AIDS, 2008 retrievable at http://www.who.int/globalatlas/predefinedReports/EFS2008/full/EFS2008_NA.pdf

² JOINT UNITED NATIONS PROGRAMME ON HIV/AIDS, RATES OF MOTHER-TO-CHILD TRANSMISSION AND THE IMPACT OF DIFFERENT PMTCT REGIMES 3, 2012 available at <http://www.epidem.org/Publications/PMTCT%20report.pdf>.

woman's informed consent prior to performing the sterilization. In some cases, women were asked to sign a stack of papers while they were in labour and on their way to the operating room. In other cases, women learned of the sterilization only after their delivery when returning to the clinic to request family planning. Some women discovered that they had undergone forced sterilization during the 2010 and 2011 court hearings. During the hearings these women learned that "BTL" Bi Tubal Ligation markings were written in their health passports to signify they were sterilized. None of these women were provided information on the nature or impact of the sterilization procedure. Instead, some of the women believe they were misled or coercively sterilized because of their HIV status.

25. With the support of the Namibia Women's Health Network, three of the cases were heard in the High Court of Namibia on July 30, 2012. In his ruling, High Court Judge Hoff found that the women did not give their informed consent for the sterilization operations to be done. The government of Namibia immediately appealed this ruling. The hearing for the appeal was set for the 17th of March 2014 at the Supreme Court and in November 2014 the Supreme Court gave its final ruling on the three cases.³ The final judgment states that the women were indeed sterilized without their informed consent and should be compensated. However there was no adequate evidence to prove that these women were sterilized because of their HIV statuses. Currently, legal processes to facilitate the compensation of the women are underway.
26. However, the Namibian government has not yet put in place measures to ensure that forced sterilization of women living with HIV is completely halted in Namibia and that medical staff ensure informed and prior consent of patients before performing any medical procedure.

Abortion

27. Another matter of concern worth bringing to the attention of the Committee relates to abortion. The State's laws only allow abortion under certain (restrictive) and defined circumstances i.e. in cases of danger to a woman's life or physical or mental health, in cases of foetal malformation and in cases of rape and incest. However approval for legal abortions as permitted by law is still difficult to obtain due to administrative hurdles. In addition, the lack of accessible family planning and legal abortion services had lead to clandestine and unsafe abortions and there is high incidence of abandonment of newborn babies in the country.
28. In 2009, the State prepared a draft reproductive health policy to which civil society groups made recommendations on the gaps in that policy, including the need to introduce vacuum aspiration methods for post-abortion care, as recommended by the World Health Organization (WHO) and the need to offer abortion services. The State is yet to finalize that policy.

Female Genital Mutilation (FGM) and harmful cultural practices

29. The practice of Female Genital Mutilation and harmful cultural practices are still used under different forms in Namibia. These practices include:
- Coerced elongation of the labia minora in young girls, causing pain, sores, exposure to infection;

³ Government of the Republic of Namibia v L.M. and Others, [2014] NASC 19.

- Sexual readiness testing by male relatives, constituting incest, rape and exposure to HIV infection;
- Coerced scarring of girls' bodies for male sexual pleasure, involving pain and exposure to HIV infection through non-sterilized blades
- Dry sex, involving pain and exposure to HIV infection
- Widow cleansing involving coerced sex and exposure to HIV infection.

30. Harmful cultural practices resulting in pain, suffering and humiliation for girls, young women and adult women originate from deeply entrenched discriminatory views and beliefs about the role and position of girls and women in their communities and societies. Harmful cultural practices targeting girls and women serve to replicate and perpetuate the subordinate position of women. The resulting unequal power relations between men and women form the basis for all forms of gender-based violence.

31. NANGOF Trust and Human Dignity make the following suggestions for the List of Issues for the examination of Namibia:

- Please provide information on the measures taken to improve the quality of health services and the recruitment of skilled health personnel.
- Please provide information on the percentage of women in need of PMTCT currently receiving it.
- Please provide information on the measures taken to increase the access to PMTCT regimes for women and girls.
- In relation to cases of forced sterilisation of women living with HIV/AIDS in Namibia, what have been the steps taken to put an end to this practice? Has the Namibian government taken steps to meaningfully investigate all claims, ensure those responsible are held to account, and work towards ending coerced sterilisation of women living with HIV?
- Has the decision of the Supreme Court (*Government of the Republic of Namibia v L.M. and Others*, [2014] NASC 19) been implemented and just compensation awarded to the victims? Have measures been initiated to start implementing the recommendations adopted by the CEDAW in 2015 in relation to these cases?
- What are the measures taken to reduce the administrative obstacles for women to access abortion services?
- What are the measures taken to finalize the reproductive health policy initiated in 2009?
- What are the steps taken towards the elimination of FGM and all harmful cultural practices in Namibia?

V. Article 13 ICESCR: The right to education

32. Education has consistently received the highest allocation in the State's National Budget. This is indeed a commendable achievement. However the outcomes and performance of the system leaves much to be desired. Of special concern is the fact that the increased budgetary allocations to the sector have not yet paved the way to achieving an equitable quality education system and has also not translated into more effective and efficient service delivery.

33. We are equally concerned about the provision of early childhood education by the State. In present-day Namibia, children under the age of six are not yet guaranteed a place in formal education. Early childhood education is left to the private initiative of churches, Non Governmental Organisations (NGOs), communities and individuals. Most of the day-

care facilities are home-based and lack adequate space, play and learning materials and professional guidance. This anomaly was pointed out and debated at the 2011 national education conference.

34. In relation to primary education, Article 20 of the Constitution provides for free and compulsory primary education. However neither the compulsory nor the free provision of the constitutional right of primary school is strictly enforced in the State. In terms of the Education Act (No. 26 of 2001) parents were required to contribute to the school development fund (SDF), pay for stationary, uniforms, schoolbooks, transport costs and examination fees. Parents who are unable to afford the school development fund can apply for exemption. Although the SDF has been abolished, some school principals still demand the payment of the SDF thus denying many children the chance to basic education.
35. Lastly, vocational education and training at secondary school level has thus far not received the requisite attention. This is indeed incomprehensible given that it is notoriously known that the State is experiencing an acute skills deficit. We request the Committee to encourage the State to give serious consideration to the recommendations table by the NANGOF Trust during the national education conference in 2011 including:
- That a plan be developed to establish at least one vocational school in each cluster at the Secondary Phase and at least one vocational institution in each region;
 - That programs offered at the vocational training institutions be regularly updated and tailored made to the development needs of the nation and the demands in the market;
 - Where feasible, the graduates from these institutions need to be supported with basic equipments and implements in their fields of study and be linked with programs aimed at small business development and youth empowerment.
36. **NANGOF Trust and Human Dignity make the following suggestions for the List of Issues for the examination of Namibia:**
- Please provide information about the measures taken to improve access to early childhood development and pre-primary education.
 - Please provide information of the status of the School Development Fund and measures taken to ensure free primary education to all children
 - Please provided information on the measures taken to develop and/or improve the access to vocational education and training at secondary schools?
 - What are the measures being taken to ensure children remain in school until the age of 16 especially since there is an inconsistency between the minimum age for employment in the Labour Act, which is 14 years of age, and the age of completing education, which is 16 years?
 - What are the measures taken to extend free education to the secondary education as described by the Minister of Finance in paragraph 98 of the 2015 budget statement presented on 31 March 2015 (available at www.mof.gov.na)?
 - What are the measures taken to increase the support to tertiary and vocational education as described by the Minister of Finance in paragraph 98 of the 2015 budget statement presented on 31 March 2015 (available at www.mof.gov.na)?